

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 134.

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J. B. SHEPARD, PLAINTIFF IN ERROR,

*vs.*

FRANK ADAMS, RECEIVER OF THE COMMERCIAL  
NATIONAL BANK OF DENVER.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF COLORADO.

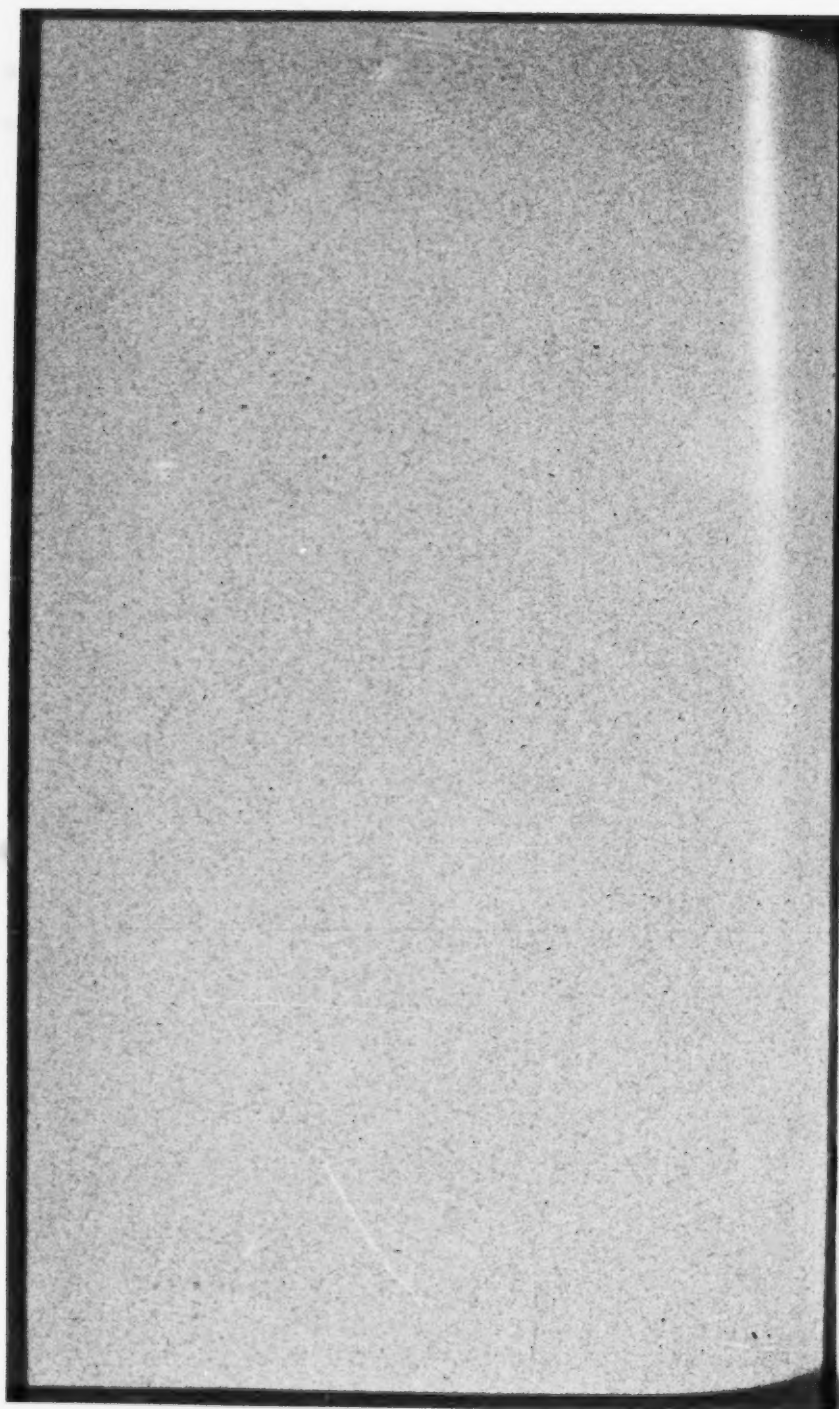
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1 Pleas in the District Court of the United States for the District of Colorado.

DISTRICT OF COLORADO:

Be it remembered that heretofore and on, to wit, the 24th day of August, A. D. 1895, came Frank Adams, receiver of the Commercial National bank, by Messrs. Thomas, Hartzell, Bryant & Lee, his attorneys, and filed in said court his complaint and sued out of and under the seal of said court a writ of summons against J. B. Shepard.

And the said complaint is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, {  
District of Colorado, } ss.:

In the District Court of the United States within and for said District.

FRANK ADAMS, Receiver of The Commercial National Bank of }  
Denver, Plaintiff, }  
vs.  
J. B. SHEPARD, Defendant. }

Comes now the above-named plaintiff, by Thomas, Hartzell, Bryant & Lee, his attorneys, and, complaining of the above-named defendant, alleges and says:

1st. That the Commercial National Bank of Denver is a corporation duly incorporated, organized, and existing under and by virtue of the act of Congress concerning national banks, and was a duly organized and existing corporation on the 14th day of July, A. D. 1893, and from that time down to the present; that heretofore and on or about the 24th day of October, A. D. 1893, the said bank having refused to pay its circulating notes and suspended payment to its depositors and being in default, and the Comptroller of the Currency of the United States, being satisfied as to the fact of such refusals, suspension, and default, did, pursuant to the statute in such case made and provided, on the said 24th day of October, 1893, appoint the plaintiff in this suit the receiver of said bank, and this plaintiff thereupon entered upon his duties as such receiver and took possession of the records, books, and assets of said bank, so far as the same could be found, and ever since has continued to be and now is the receiver of said bank, with all the powers and duties incident to the office of such receiver and prescribed by the acts of Congress in such case made and provided, and that said bank, at the time of its failure and suspension, and at the time of the appointment of this plaintiff as receiver thereof, was utterly and wholly insolvent, and is now and at all times since then has been utterly and wholly insolvent.

2nd. That on or about the 7th day of June, 1893, the defendant above named, for a valuable consideration, made, executed, and delivered to the said The Commercial National Bank of Denver his certain promissory note, in and by which he

agreed thirty days after the date thereof to pay to the said bank the sum of \$20,000.00, together with interest thereon at the rate of twelve per cent. per annum from date until paid; which said note was in words and figures as follows, to wit:

\$20,000.00.

DENVER, COLO., *June 7th*, 1893.

Thirty days after date I promise to pay to the order of the Commercial National Bank of Denver twenty thousand dollars, at the Commercial National Bank of Denver, with interest at twelve per cent. per annum from maturity until paid. Value received.

(Signed)

J. B. SHEPARD.

When due, July 7-10.

Number 6615.

And that afterwards and on or about the 12th day of July, 1893, the said defendant did pay on said note the sum of two thousand and thirty-five dollars and seventy cents, and upon the dates hereinafter named the said defendant also did pay on account of said note the sums hereinafter mentioned, to wit, July 14th, 1893, \$1,000; October 31st, 1893, \$32.00; April 11th, 1894, \$6.00; September 25th, 1894, \$19.00; December 27th, 1894, \$12.00; April 16th, 1895, \$5.00; all of which said payments were duly endorsed on the back of said note, the same being all of the payments which have ever  
4 been made on account thereof.

That after the appointment of this plaintiff as receiver of said bank he found said note among the assets of said bank and demanded payment thereof from said defendant, but the said defendant wholly failed to pay the same and ever since then has wholly failed and neglected to pay the same or any part thereof, except as hereinbefore stated, and there is now due and owing from the said defendant to this plaintiff in principal and interest on said note the sum of \$21,700.14.

Wherefore the said plaintiff prays judgment against the said defendant for the sum of \$21,700.14, together with interest and costs of suit.

THOMAS, HARTZELL, BRYANT & LEE,

*Attorneys for Plaintiff.*

(Indorsed:) 1180. U. S. district court. Frank Adams, receiver of The Commercial National Bank, *vs.* J. B. Shepard. Complaint. Filed Aug. 24, 1895. Francis W. Tupper, clerk. Thomas, Hartzell, Bryant & Lee, attorneys for plaintiff.

And the said summons and proof of service is in words and figures as follows, to wit:

5 UNITED STATES OF AMERICA, } ss :  
 District of Colorado, }

In the District Court of the United States for the District of  
 Colorado.

FRANK ADAMS, Receiver of The Commer-	}	Complaint. Filed in the Clerk's Office this 24 Day of Aug., A. D. 18—.
cial National Bank of Denver, Plaintiff,		
<i>versus</i>		
J. B. SHEPARD, Defendant.		

The President of the United States of America to J. B. Shepard,  
 Greeting:

You are hereby notified that an action has been brought in said court by Frank Adams, receiver, etc., plaintiff, against you as defendant to recover the sum of \$21,700.14 due from defendant to plaintiff on a certain promissory note made and delivered by defendant to the Commercial National Bank of Denver for the sum of \$20,000.00, dated at Denver, Colorado, June 7th, 1893, together with interest on said sum from August 24th, 1895, as more fully set forth and described in the complaint filed herein and to which reference is here made, and for costs of suit.

You are hereby required to appear and demur or answer to the complaint filed in said action in said court within ten days (exclusive of the day of service) after this summons shall be served on you, if such service shall be made within the county of  
 6 Arapahoe; otherwise within forty days from the day of service, and if you fail so to do the said plaintiff will take judgment against you by default, according to the prayer of the said complaint, for said sum of \$21,700.14, interest as aforesaid, and costs.

Witness the Honorable Moses Hallett, judge of the district court of the United States for the said district, and the seal  
 [SEAL.] thereof, at the city of Denver, in said district, this 24th day of August, A. D. 1895, and of the Independence of the United States the 120th year.

FRANCIS W. TUPPER, *Clerk*,  
 By CHARLES W. BISHOP,  
*Deputy Clerk*.

*Proof of Service.*

UNITED STATES OF AMERICA, } ss :  
 District of Colorado, }

DENVER, Aug. 27th, A. D. 1895.

I hereby certify that I received the within writ on the 24th day of August, A. D. 1895, and that I have personally served the same upon the said defendant, J. B. Shepard, by delivering to him personally a true copy of the within writ at the time and place as follows: At Denver, county of Arapahoe, on the 27th day of August, A. D. 1895.

This writ therefore returned, served as the law directs, this 27th day of August, A. D. 1895.

By HENRY S. DAVIS,  
Deputy Marshal.

(Indorsed :) No. 1180. District court of the United States for the district of Colorado. Frank Adams, receiver, etc., plaintiff, *versus* J. B. Shepard, defendant. Summons. Filed Aug. 28th, 1895. F. W. Tupper, clerk. Thomas, Hartzell, Bryant & Lee, for plff.

Forty-eighth day, November term.

SATURDAY, *January 4th, A. D. 1896.*

Present: Honorable Moses Hallett, district judge, and other officers as noted on the 5th day of November last past.

FRANK ADAMS, Receiver of the Commercial National Bank of Denver, vs. J. B. SHEPARD.	}	1180. Action on Promissory Note.
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At this day comes the plaintiff, by W. H. Bryant, Esq., his attorney, and the defendant, by A. L. Doud, Esq., his attorney, who appears specially for the purpose of this motion only, also comes.

And thereupon, the motion of the defendant to quash the summons herein coming on now to be heard, is submitted to the court, and the court, being sufficiently advised in the premises, it is ordered, for good and sufficient reasons to the court appearing, that said motion be, and is hereby, denied.

Whereupon the plaintiff moves the court for entry of default and for judgment against the defendant.

And it now appearing to the court that the said defendant hath been duly served with summons herein and the time allowed by law and the rule and practice of the court to answer having since expired and no demurrer or answer having since been filed herein and the defendant still failing and refusing to answer or plead, it is ordered that the default of the defendant be, and is hereby, entered of record.

And thereupon the court doth assess the plaintiff's damages by reason of the premises in his complaint mentioned at twenty-two thousand three hundred and fifty-one dollars (\$22,351.00).

Wherefore it is considered by the court that judgment be entered herein in favor of the plaintiff and against the defendant for the said sum of twenty-two thousand three hundred and fifty-one dollars (\$22,351.00) damages and the plaintiff's costs, to be taxed.

And day until thirty (30) days from this day is allowed the defendant within which time to file a bill of the exceptions reserved by him upon the order and ruling of the court herein and supersedeas bond upon writ of error will be in the sum of twenty-five thousand dollars (\$25,000.00).



9

SATURDAY, *January 4th, A. D. 1896.*

FRANK ADAMS, Receiver of the Commercial	}	1180. Action on a
National Bank of Denver,		
<i>vs.</i>		
J. B. SHEPARD.		
		}{ Promissory Note.

On this 4th day of January, A. D. 1896, the same being one of the regular juridical days of the November term, A. D. 1895, of said court—

Present: Honorable Moses Hallett, district judge.

It is considered by the court that the plaintiff do have and recover of and from the defendant twenty-two thousand three hundred and fifty-one dollars (\$22,351.00), his damages by occasion of the premises in his complaint mentioned in form aforesaid assessed, and his costs by him in this behalf laid out and expended, to be taxed, and have execution therefor.

UNITED STATES OF AMERICA, }  
*District of Colorado,* } *ss.*

In the District Court of the United States within and for said District.

FRANK ADAMS, Receiver of the Commercial National Bank of	}
Denver, Plaintiff,	
<i>vs.</i>	
J. B. SHEPARD, Defendant.	

### *Bill of Exceptions.*

Be it remembered that the summons in the above-entitled  
 10 cause was issued and made returnable under and in pursu-  
 ance of the general rule of this court, duly adopted on the  
 10th day of October, 1877: which said general rule is in the words  
 and figures following, to wit:

### RULE III.

#### *Actions at Law.*

"Actions at law shall be commenced by filing a complaint with the clerk, upon which a summons shall be issued, directed to the defendant, requiring him to appear and demur or answer to the complaint within ten days from the lay of service, if such service shall be made within the county from which the summons was issued, and within forty days from the day of service if such service shall be made elsewhere in the district. Except as provided in these rules and in the laws of the United States, the summons and the pleadings and proceedings in the action shall be as prescribed in the laws of the State."

Be it further remembered that on March 17th, A. D. 1877, the General Assembly of the State of Colorado duly enacted an act,

entitled "An act providing a system of procedure in civil actions in the courts of justice of the State of Colorado," and that said act was duly approved and took effect upon said last-named date; that said act was in full force and effect at the time of the adoption of said rule of court hereinabove set out, and that said act contains *inter alia* the following provisions:

Chapter III, section 29:

"Civil actions in the district courts and county courts shall be commenced by the filing of a complaint with the clerk of  
11 the court in which the action is brought and the issuing of a summons therein: provided, that after the filing of the complaint a defendant in the action may enter his appearance therein, personally or by attorney, which appearance shall be equivalent to personal service of the summons upon him."

SECTION 32. "The time in which the summons shall require the defendant to answer the complaint shall be as follows: 1st, If the defendant is served within the county in which the action is brought, ten days.

2nd. If the defendant is served out of the county but in the district in which the action is brought, twenty days. 3rd, For all other cases, forty days."

And be it further remembered that the General Assembly of the State of Colorado did, by an act which was duly approved on April 7th, 1887, and which took effect on the 1st day of August, 1887, repeal said sections 29 and 32 hereinabove set forth and all acts or parts of acts amendatory of said sections 29 and 32, and did enact the following section, which was duly approved and took effect on the 5th day of August, A. D. 1887, and has been in force ever since said last-named date and until the present time, to wit:

Chapter III, Section 32. "Civil actions shall be commenced by the filing of a complaint with the clerk of the court in which the action is brought, or by the service of a summons.

The complaint must be filed within ten days after the sum-  
12 mons is issued, or the action may be dismissed without notice, and in such case the court may, in its discretion, if it shall be of the opinion that the action was vexatiously commenced, tax a reasonable attorney's fee as costs in favor of defendant, to be recovered of plaintiff or his attorney."

And, further, that the General Assembly of the State of Colorado did, by an act duly approved on April the 19th, 1889, which took effect on July 19th, 1889, and which has been in force ever since said last-named date and until the present time, pass an act which included, *inter alia*, the following section:

SECTION 1. "Section thirty-four of an act entitled 'An act to provide a code of procedure in civil actions for courts of record in the State of Colorado, and to repeal all acts inconsistent therewith,' approved April 7, 1887, is hereby amended to read as follows: Sec. 34. The summons shall state the parties to the action, the State, county and court in which it is brought, and require the defendant to appear and answer the complaint within twenty days after the service of the summons, if served in the county in which the action

is brought; or if served out of such county or by publication, within thirty days after the service of the summons, exclusive of the day of service, or that judgment by default will be taken against him according to the prayer of the complaint, and shall briefly state the sum of money or other relief demanded in the action; but the summons shall not be considered void or erroneous on account of an insufficient statement of the relief demanded, unless the same is manifestly misleading. If a copy of the complaint be not served with the summons, or if the service be made out of the State, ten days additional to the time specified in the summons shall be allowed for appearance and answer, but the form of the summons shall be the same in all cases."

13 Be it further remembered that on January 4th, 1896, the same being one of the days of the 1895, November, term of said court, said cause having come on to be heard upon the motion of the defendant to quash the summons issued herein, which said motion is in the words and figures following, to wit:

"UNITED STATES OF AMERICA, }  
District of Colorado, } ss:

In the District Court of the United States within and for said District.

FRANK ADAMS, Receiver of the Commercial National Bank of Denver, Plaintiff,	} Motion.
vs.	
J. B. SHEPARD, Defendant.	

Comes now the defendant, appearing specially, by Doud & Fowler, his attorneys, and moves the court to quash the summons heretofore issued herein for the following reasons:

First. Said summons is not such a summons as provided for by the statutes of Colorado. The said summons is made returnable and requires the defendant to appear and answer in this action in this court within ten days from the day of the service of said summons instead of thirty days, as provided by the statutes of Colorado.

Second. The copy of said summons served upon said defendant is not certified to as a true copy by the clerk of this honorable court.

(Signed)

DOUD & FOWLER,  
*Att'ys for Def't.*"

Upon hearing of which said motion the said defendant appeared specially for the purpose of said motion, and for no other purpose, by Doud & Fowler, his attorneys, and the plaintiff by Thomas, Byrant & Lee, his attorneys, and the court, having heard  
14 arguments of counsel and being fully advised, did, without delivering an opinion, overrule said motion.

To which said ruling the defendant, by his counsel, then and there duly excepted.

And thereupon elected to stand by said motion to quash said summons.

Whereupon the court rendered judgment against the defendant and in favor of the plaintiff, according to the prayer of the plaintiff's complaint.

To which said judgment the defendant, by his counsel, then and there duly excepted.

But inasmuch as the matters aforesaid do not appear of record counsel for defendant presents this bill of exceptions and prays that the same may be signed and sealed by the court and made a part of the record.

And it is done accordingly this 28th day of January, A. D. 1896.

MOSES HALLETT, *Judge*. [SEAL.]

O K.

THOMAS, BRYANT & LEE.

(Indorsed :) No. 1180. District court of the United States for the district of Colorado. Frank Adams, receiver of the Commercial National bank, *vs.* J. B. Shepard. Filed Jan. 28, 1896. Francis W. Tupper, clerk. Bill of exceptions. Doud & Fowler, att'ys for def't.

15 UNITED STATES OF AMERICA, }  
District of Colorado, } ss :

In the District Court of the United States within and for said District.

FRANK ADAMS, Receiver of the Commercial National	}	Petition.
Bank, Plaintiff,		
<i>vs.</i>		
J. B. SHEPARD, Defendant.		

To the Honorable Moses Hallett, judge of the district court of the United States within and for the district of Colorado :

Comes now the defendant in the above-entitled cause and complains that there is manifest error in the record and proceedings in said cause, to the damage of the defendant, in the overruling of said defendant's motion to quash the summons herein, and also in rendering judgment against the defendant.

Wherefore defendant prays that this court will grant to him a bill of exceptions and allow him the writ of error to the honorable Supreme Court of the United States.

DOUD & FOWLER,  
*Attorneys for Defendant.*

(Indorsed :) No. 1180. In the district court of the United States in and for the district of Colorado. Frank Adams, receiver of the Commercial National bank, *vs.* J. B. Shepard. Petition for writ of error. Filed Jan. 28, 1896. Francis W. Tupper, clerk. Doud & Fowler, att'ys for defendant.

16 UNITED STATES OF AMERICA, } ss:  
 District of Colorado, }

In the District Court of the United States within and for said District.

FRANK ADAMS, Receiver of the Commercial National Bank of  
 Denver, Plaintiff,

vs.

J. B. SHEPARD, Defendant.

*Assignment of Errors.*

Now comes said defendant, by Doud & Fowler, his attorneys, and says that in the record and proceedings aforesaid there is manifest error, in this:

First. That the court erred in overruling the defendant's motion to quash the summons issued herein.

Second. That the court erred in rendering judgment against the defendant, according to the prayer of the plaintiff's complaint.

Wherefore the defendant prays that the judgment aforesaid for and on account of the errors aforesaid may be reversed, and that the defendant may be restored to all rights and privileges which he has lost by reason of the aforesaid judgment and proceedings.

DOUD & FOWLER,

*Attorneys for Defendant.*

17 (Indorsed :) No. 1180. District court of the United States for the district of Colorado. Frank Adams, receiver of the Commercial Nat'l bank, vs. J. B. Shepard. Assignment of errors. Filed Jan. 28, 1896. Francis W. Tupper, clerk. Doud & Fowler, att'ys for defendant.

THE UNITED STATES OF AMERICA, }  
 District of Colorado. }

Know all men by these presents that we, James B. Shepard and R. L. Wilson and W. P. Baker, are held and firmly bound unto Frank Adams, receiver of the Commercial National Bank of Denver, in the full and just sum of five hundred (500) dollars, to be paid to the said Frank Adams, receiver of the Commercial National Bank of Denver, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of January, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at the November term, A. D. 1895, of the district court of the United States for the district of Colorado, in a suit pending in said court between said Frank Adams, receiver of the Commercial National Bank of Denver, plaintiff, and said James B.

Shepard, defendant, judgment was rendered against the said James B. Shepard, and the said James B. Shepard having obtained a writ of error to the Supreme Court of the United States of America and a citation directed to the said Frank Adams, receiver of the Commercial National bank, citing and admonishing him to be and appear in the Supreme Court of the United States of America sixty days from and after the date of said citation :

Now, the condition of the above obligation is such that if the said James B. Shepard shall prosecute said writ of error to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

JAMES B. SHEPARD.	[SEAL.]
R. L. WILSON.	[SEAL.]
W. P. BAKER.	[SEAL.]

Approved Jan'y 28th, 1896.  
MOSES HALLETT, *Judge.*

*Justification.*

THE UNITED STATES OF AMERICA, }  
District of Colorado, } ss :

R. L. Wilson and W. P. Baker, sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in real estate, mining stocks, & other property the sum below set opposite his name, that is to say :

19 As to R. L. Wilson, \$500 in unincumbered real estate.

As to W. P. Baker, \$500 in mining stocks and other property over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

R. L. WILSON.  
W. P. BAKER.

Subscribed and sworn to before me, at Denver, this 27th day of January, A. D. 1896.

[SEAL.]

FRANCIS W. TUPPER, *Clerk,*  
By CHARLES W. BISHOP,  
*Deputy Clerk.*

(Indorsed :) Gen. No. 1180. District court of the United States, district of Colorado. Frank Adams, rec'r, &c., vs. J. B. Shepard. Bond for costs, \$500.00. Filed this 28 day of January, A. D. 1896. Francis W. Tupper, clerk.

20 *Writ of Error to District Court U. S., District of Colorado.*

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, } ss:  
*District of Colorado,*

The President of the United States to the judges of the district court of the United States for the district of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, between Frank Adams, receiver of the Commercial National Bank of Denver, plaintiff, and J. B. Shepard, defendant, a manifest error hath happened, to the great damage of the said J. B. Shepard, defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 25th day of February next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28th day of January, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the 120th year.

FRANCIS W. TUPPER, *Clerk.*

Seal United States District Court, District of Colorado.

Allowed by—

MOSES HALLETT, *Judge.*

21 [Endorsed:] Gen. No., 1180. Supreme Court of the United States. J. B. Shepard, plaintiff in error, *vs.* Frank Adams, receiver of the Commercial National bank. Writ of error to district court U. S., district of Colorado. Filed in district court of the U. S. this 28th day of Jan'y. A. D. 1896. Francis W. Tupper, clerk, by ———, deputy clerk. Doud & Fowler, attorney for plaintiff in error.

*Return.*

THE UNITED STATES OF AMERICA, } ss:  
*District of Colorado,*

In obedience to the command of the within writ I herewith transmit to the honorable the Supreme Court of the United States a duly

certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Witness my hand and the seal of said district court, at Denver, in said district, this fourth day of February, 1896.

[Seal United States District Court, District of Colorado.]

FRANCIS W. TUPPER, *Clerk*,  
By CHARLES W. BISHOP,  
*Deputy Clerk*.

22

*Citation.*

U. S. — Court.

THE UNITED STATES OF AMERICA, }  
District of Colorado, } ss :

The United States of America to Frank Adams, receiver of the Commercial National Bank of Denver, Greeting :

You are hereby cited and admonished to be and appear at Supreme Court of the United States, to be holden at Washington, on the 25th day of February next, pursuant to a writ of error filed in the clerk's office of the district court of the United States, wherein J. B. Shepard is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the district court of the United States for the district of Colorado, this 28th day of January, in the year of our Lord one thousand eight hundred and ninety-six.

MOSES HALLETT, *Judge*.

23

[Endorsed:] Gen. No., 1180. — court of the United States, district of Colorado. J. B. Shepard, plaintiff in error, vs. Frank Adams, rec'r, &c., defendant in error. Citation. Filed in district court of the U. S. this 29 day of January, A. D. 1896. F. W. Tupper, clerk, by — — —, deputy clerk. Doud & Fowler, attorneys for plaintiff in error.

*Proof of Service*

THE UNITED STATES OF AMERICA, }  
District of Colorado, } ss

On this — day of —, A. D. 18—, personally appeared — — before me, the subscriber, a clerk of the — court of the United States for the district of Colorado, and makes oath that he delivered a true copy of the within citation to — —.



DENVER, COLORADO, *January 30th, 1896.*

We acknowledge service of copy of citation in the above-entitled cause and accept service of said citation hereby.

THOMAS, BRYANT & LEE,  
*Attorneys for Plaintiff, Frank Adams, Receiver of  
the Commercial Nat. Bank of Denver.*

Sworn to and subscribed before me this — day of —, A. D. 18—

By — —, *Clerk,*  
— —, *Deputy Clerk.*

24 UNITED STATES OF AMERICA, }  
*District of Colorado,* } ss.

I, Francis W. Tupper, clerk of the district court of the United States for the district of Colorado, do hereby certify the above and foregoing pages, numbered from one to 19, both inclusive, to be a true, perfect, and complete transcript and copy of the record and proceedings and of all thereof heretofore filed or had and entered of record in said court and in a certain cause lately in said court pending, wherein Frank Adams, receiver of the Commercial National Bank of Denver, was plaintiff and J. B. Shepard was defendant, as fully and completely as the same still remain on file or of record in my office at Denver.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this fourth day of February, A. D. 1896.

[Seal United States District Court, District of Colorado.]

FRANCIS W. TUPPER, *Clerk,*  
By CHARLES W. BISHOP,  
*Deputy Clerk.*

25 In the Supreme Court of the United States.

J. B. SHEPARD, Plaintiff in Error,	} Stipulation.
<i>vs.</i>	
FRANK ADAMS, Receiver of the Commercial National Bank of Denver, Defendant in Error.	

It is hereby stipulated by and between the attorney for the plaintiff in error and the attorneys for the defendant in error that the certificate heretofore issued by the judge of the district court of the United States in and for the district of Colorado, certifying the alleged question of jurisdiction in this cause to the Supreme Court of the United States for decision, may now be filed in the office of the clerk of the Supreme Court of the United States and made a part of the record in said above entitled cause, the same as if it had been sent up by the clerk of the district court of the United States

for the district of Colorado at the same time that the record now on file in said Supreme Court was sent up by him.

T. J. O'DONNELL,

*Att'y for Plaintiff in Error.*

C. S. THOMAS,

W. H. BRYANT,

THOMAS, BRYANT & LEE,

*Att'ys for Defendant in Error.*

26 UNITED STATES OF AMERICA, } ss :  
District of Colorado,

In the District Court of the United States within and for said District, November Term, A. D. 1895.

FRANK ADAMS, Receiver of the Commercial National Bank of Denver, Plaintiff, } Certificate.  
vs.  
J. B. SHEPARD, Defendant.

Present: The Honorable Moses Hallett, judge.

The following is a statement of the condition of the process and pleadings in the above-entitled action :

The action is upon a promissory note. Complaint therein was filed in said court on August 24th, 1895. A summons was issued by the clerk of said court on said day in pursuance of rule three of said court; which said summons was served upon the defendant by the marshal on August 27th, 1895, by delivering a true copy of said summons to the defendant, in Denver, Colorado. Said summons was in the words and figures following, to wit :

UNITED STATES OF AMERICA, } ss :  
District of Colorado,

In the District Court of the United States for the District of Colorado.

FRANK ADAMS, Receiver of the Commercial National Bank of }  
Denver, Plaintiff, }  
versus  
J. B. SHEPARD, Defendant.

Complaint filed in the clerk's office this 24th day of August, A. D. 1895.

27 The President of the United States of America to J. B. Shepard, Greeting :

You and each of you are hereby notified that an action has been brought in said court by Frank Adams, receiver, the plaintiff, against you, as defendant, to recover the sum of \$21,200.14, due from defendant to plaintiff on a certain promissory note made and delivered by defendant to the Commercial National Bank of Denver for

the sum of \$20,000, dated at Denver, Colorado, June 7th, 1893, together with interest on said sum from August 24th, 1895, as more fully set forth and described in the complaint filed herein, and to which reference is here made, and for cost of suit.

You are hereby required to appear and demur or answer to the complaint filed in said action in said court within ten days (exclusive of the day of service) after this summons shall be served on you, if such service shall be made within the county of Arapahoe; otherwise within forty days from the day of service; and if you fail so to do the said plaintiff will take judgment against you by default, according to the prayer of the said complaint, for said sum of \$21,200.14, interest as aforesaid, and costs.

Witness the Honorable Moses Hallett, judge of the district court of the United States for the said district, and the seal thereof, at the city of Denver, in said district, this 24th day of August, A. D. 1895, and of the Independence of the United States the 120th year.

Seal Dist. Ct. U. S.,  
Colo.

FRANCIS TUPPER, *Clerk*,  
By — — —, *Deputy Clerk*.

Within ten days after the service of said summons, and on, to wit, the 4th day of September, 1895, the defendant in said action appeared specially for the purpose of making a motion to quash said summons only, and filed in said court such motion in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:  
District of Colorado, }

In the District Court of the United States within and for said District.

FRANK ADAMS, Receiver of the Commercial National Bank of }  
Denver, Plaintiff, }  
vs.  
J. B. SHEPARD, Defendant. }

Comes now the defendant, appearing specially, by Doud & Fowler, his attorneys, and moves the court to quash the summons heretofore issued herein for the following reasons:

First. Said summons is not such a summons as provided for by the statutes of Colorado. The said summons is made returnable and requires the defendant to appear and answer in this action in this court within ten days from the day of the service of said summons, instead of thirty days, as provided by the statutes of Colorado.

Second. The copy of said summons served upon said defendant is not certified to as a true copy by the clerk of this honorable court.

DOUD & FOWLER,  
*Att'ys for Def't.*

Thereafter, on, to wit, the 4th day of January, A. D. 1896, the court, upon hearing argument of counsel, but without rendering any decision, overruled said motion; said defendant thereupon elected to stand by said motion, and the court thereupon rendered judgment in favor of plaintiff and against defendant, according to the prayer of the complaint.

29      Thereafter, on, to wit, the 28th day of January, A. D. 1896, this defendant petitioned the court for a bill of exceptions, which was allowed; and thereafter, upon said day, a writ of error was granted to the defendant to the Supreme Court of the United States, and a citation was duly signed and served.

Thereupon, upon request of the defendant and in compliance with statute of United States in such cases made and provided, the question as to whether said summons was in compliance and accordance with the provisions of the statute of the State of Colorado relating to "process," as it is provided by the statute of the United States it should be, the same being the sole and only question in said cause, is hereby certified to the Supreme Court of the United States for decision, and it is hereby ordered that the clerk of this court do transmit this certificate, together with the record of this cause and the bill of exceptions, the writ of error, cost bond, and the citation, to the Supreme Court of the United States, for the purpose of having said court determine said question as to whether said summons is in compliance with the aforesaid laws, and for the purpose of the prosecution of said writ of error so allowed.

And it is done accordingly this 28th day of January, A. D. 1896.

MOSES HALLETT, *Judge*.

30      (Indorsed :) 1180. No. —. District court of United States, district of Colorado. Frank Adams, receiver, *vs.* J. B. Shepard. Certificate of judge as to jurisdictional question. Doud & Fowler, att'ys for defendant. Filed Mar. 25, 1896. Francis W. Tupper, clerk.

UNITED STATES OF AMERICA, }  
District of Colorado, } ss :

I, Francis W. Tupper, clerk of the district court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of a certificate of the judge of said court as to the fact that a jurisdictional question was involved in this case heretofore filed in said court and in a certain cause lately in said court pending, wherein Frank Adams, receiver of the Commercial National Bank of Denver, was plaintiff and J. B. Shepard was defendant, as fully and completely as the same still remains on file in my office.

Seal United States District Court, District of Colorado.

In testimony to the above I do hereto sign my name and affix the seal of said court, at Denver, in said district, this 28th day of March, A. D. 1896.

FRANCIS W. TUPPER, *Clerk*.

31 [Endorsed:] Case No. 16,198. Supreme Court U. S., October term, 1895. Term No., 908. J. B. Shepard, P. E., vs. Frank Adams, receiver, &c. Stipulation and addition to record. Filed April 11, 1896.

Endorsed on cover: Case No. 16,198. Colorado D. C. U. S. Term No., 134. J. B. Shepard, plaintiff in error, vs. Frank Adams, receiver of the Commercial National Bank of Denver. Filed February 20, 1896.